In the

Supreme Court of the United States

October Term, 1976

No. 76-405

James C. Gabriel, *Pro Se*, a Class B Equity Bearing Common Stockholder in the Missouri Pacific Railroad Company, for Himself,

Plaintiff-Appellant, Pro Se,

—v.—

United States of America and Interstate Commerce Commission,

Defendants-Appellees,

Missouri Pacific Railroad Company,

Intervening Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY (THREE-JUDGE COURT)

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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JURISDICTIONAL STATEMENT

Appellant James C. Gabriel, Pro Se, appeals from the Opinion of the Three Judge District Court, District of New Jersey in Trenton, dated April 20, 1976, before Honorable Judge Hunter, Circuit Judge, Whipple and Fisher, District Judge (Appendix C) in Civil Action 74-471 who af-

firmed the findings and decision of the Commission without first ordering the I.C.C. to evaluate my Class B equity bearing common stocks according to the MoPac I.C.C. (Appendix I) "Agreed Systems Plan" of Reorganization or Charter, 290 I.C.C. 477 to find the real true value of my Class B common for a fair exchange on a value for value exchange basis into the new MoPac Common shares of my Class B according to the Fifth Amendment "due process of law."

Judgment dated May 4, 1976 was issued by "the Court having considered all of the documents filed as well as the briefs and oral argument of counsel and the court having filed an opinion on April 20, 1976 and for good cause shown, ordered and adjudged that final order of the Interstate Commerce Commission herein be and the same hereby is affirmed without costs." Filed May 6, 1976 (Appendix B).

The Court below had denied my suit for a due process of law evaluation of my Class B equity bearing common stocks after having considered my brief on the merits of the MoPac case, dated February 3, 1976, in which I had asked the Court since the beginning of my MoPac case No. 74-471 to order the I.C.C. to evaluate my Class B equity bearing common shares according to the MoPac I.C.C. Agreed System Plan of 1954-1955, 290 I.C.C. 477, pages 492, 597-600, 624, 625 and 665 or MoPac Charter. Even though the majority of Class B stockholders may have voted in favor of the "Plan of Recapitalization" at $2,450 value per Class B, but plaintiff is a dissenter who requests an evaluation of his Class B common according to due process of the 5th amendment. It is unconstitutional to force plaintiff to accept a "Recapitalization Plan" of MoPac at $2,450 per Class B, but plaintiff requests the court to order the I.C.C. to re-evaluate his Class B stocks according to 290 I.C.C. 477 to find its real full value in order to exchange his Class B for new common of the recapitalized MoPac on a value for value exchange basis, equal value exchanged for equal value received.

The lower court had affirmed the order of I.C.C. Finance Docket #27346, Decided December 6, 1973, granting authority to MoPac under Section 20 of this Act, to issue new securities without first ordering the I.C.C. to evaluate Plaintiff's Class B equity shares according to the I.C.C. "Agreed System Plan" of Reorganization or Charter to find Class B, real true value.

MoPac's Charter 290 I.C.C. 477 is a law of the United States that must be enforced in order to find my Class B equity shares' real true value for a fair exchange of my Class B for new MoPac common stocks on a value for value exchange basis into the new MoPac common which is close to $22,500 per Class B value, made up of $349 million in Retained Income and $545 million in property values, including land and land mineral rights or a total of $894 million for $39,731 shares of Class B, as of December 31, 1972, and not the mere $2,450 per Class B given by Mississippi River Corporation in a "Settlement Agreement" dated as of Dec. 18, 1972, by and between Alleghany Corporation, MoPac and Mississippi River Corp. for the purchase of Alleghany's 53% control of Class B. Alleghany had been told to divest itself of its Class B by the I.C.C. (See Alleghany Corp. Control and Purchase Jones Motor Co., Decided 1/17/70, #MC-F-10444 p. 339 and 350) (Appendix J), in order to remain as a motor carrier, by having purchased Jones Motor Company, under the jurisdiction of the I.C.C.

to save penalty I.R.S. taxes amounting to millions of dollars yearly, and at the same time to be outside the jurisdiction of the S.E.C. and its Federal Rules on securities. Alleghany controls Investors Diversified Services, Inc., a $7 billion Mutual Funds Investment Company, and being outside the S.E.C. and its federal rules must be of a great advantage to Alleghany.

Appellant Gabriel has been fighting for a due process of law evaluation of his Class B MoPac equity bearing common according to his Constitutional rights under the 5th Amendment, since the idea of a "Plan of Recapitalization" came into being. Appellant voted against the "Settlement Agreement" or "Plan of Recapitalization" at the MoPac Stockholders Special Meeting on June 15, 1973 in Saint Louis, having personally attended the Special Meeting. All appellant wanted was a due process evaluation of his Class B to get value for value surrendered for new MoPac common equity shares in the Recapitalization.

Appellant attended the I.C.C. Hearing in Washington, D.C., September 17 to September 20, 1973, Finance Docket #27346, and his argument in the proceedings was for due process evaluation of his Class B common equity bearing shares.

Appellant filed a complaint on April 3, 1974, and an amended complaint at the United States District Court, District of New Jersey, Civil Action #74-471, for Review of Administrative Action of the I.C.C., Finance Docket #27346, to issue new securities under a Plan of Recapitalization by MoPac under Section 20a, which is being done without a due process of law evaluation for the true value

of my Class B equity bearing common stocks, that this Recapitalization takes away 61% of my Class B equity and retained income, in addition to huge property values in lands and in mineral rights that belong to my Class B stocks, and that my Class B equity bearing common should be evaluated "in accordance to the Missouri Pacific I.C.C. Agreed Plan of Reorganization of 1954-1956." This Agreed MoPac Plan of Reorganization is a law of the United States because it was confirmed by the I.C.C. in 1954 and certified to the United States District Court in Saint Louis, which in turn confirmed the Agreed Plan and certified it to the I.C.C. making the Agreed Plan a law of the United States, and this law of the United States must be enforced.

The I.C.C. Division 3 of the Commission in its Opinion of Service, Dated December 14, 1973, effective date December 14, 1973, Finance Docket #27346, when it granted authority to MoPac to issue new securities under Section 20a, itself admits the loss of 61% of B values, as follows:

> "And it is not disputed, that should the new preferred shares be converted into new common as contemplated in this plan the equity position of the Class B stockholders would be reduced from 61½% to 25½%."

This admission by Division 3 of the Commission shows that the value of Class B was not arrived at through due process of law. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented which require plenary review.

Orders and Opinions Below

Notice of Appeal to the Supreme Court of the United States of America seeking to get a due process of law evaluation of his Class B equity bearing MoPac Common shares according to the Constitution of the United States, filed July 19, 1976 is attached hereto as Appendix A.

The May 6, 1976 Order and Judgment of the Three-Judge District Court below denying Appellant's suit requesting a due process of law evaluation of his Class B equity bearing Common MoPac stocks according to the MoPac-I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477 to find the real true value of Appellant's Class B shares for an exchange of his Class B equity bearing shares for new Common MoPac shares on a value for value basis is unreported as far as Appellant knows. A copy is attached hereto as Appendix B.

This Order was preceded by an Opinion, dated April 20, 1976 is unreported as far as Appellant knows. A copy of aforesaid Opinion is attached hereto as Appendix C.

A copy of the Court's Letter Opinion denying Appellant's Motion of June 9, 1976 is dated June 9, 1976, and is attached hereto as Appendix E.

A copy of the Assistant United States Attorney, Mr. Ronald L. Reisner, Esq., letter to Honorable Clarkson S. Fisher, United States District Judge to sign proposed orders within 10 days in accordance with the memorandum of the Court dated May 29, filed June 2, 1976 and the Letter Opinion of the Court dated June 9, 1976 is attached hereto as Appendix F. The signed proposed orders were signed June 21, 1976, attached as Appendix G, and on

June 29, 1976, attached as Appendix H. These Orders are unreported as far as Plaintiff Pro Se knows.

Copy of a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., in the 8th day of July, 1966. *Mississippi River Fuel Corp., et al.* v. *Rose Slayton, et al.*, No. 17,836, U.S. Ct. of Appeals, 8th Cir. (F. D. No. 22951).

Voted *not* to authorize the filing by the General Counsel of a brief *amicus curiae* in the above-entitled court case; Chairman Bush voting to direct the General Counsel to file the aforesaid brief in support of the petition for a writ of certiorari. Appendix S.

Copy of Finance Docket #9918, Missouri Pacific Railroad Company Reorganization—290 I.C.C. 477, pages 477, 492, and 665. Appendix T.

Copy of Alleghany Corp. control and purchase Jones Motor Co., Inc., No. MC-F-10444. Appendix U.

Jurisdiction of This Court

1. The jurisdiction of the Supreme Court of the United States to hear this appeal rests upon 28 U.S.C. 1253 to review an order of the Three-Judge District Court on direct appeal.

2. Jurisdiction of the District Court below was instituted pursuant to provisions of U.S. Code Title 28, Sections 1326, 1398, 2284, 2321, 2325, and Title 5, Section 1009 which confers jurisdiction upon the Three-Judge Court of the United States District Court, District of N.J.

3. Jurisdiction is also conferred by the Constitution of the U.S. It is in violation of the Fifth Amendment on due process of law not to evaluate any Class B equity bearing shares according to 290 I.C.C. 477 to find Class B real true value. It is also a violation of Article 1, Section 10 of the Constitution. Not to first evaluate Class B under due process. Article 1, Section 10 states as follows: No State shall * * * pass any * * * ex post facto law, or law impairing this obligation of contracts * * *." Class B should first be evaluated under due process of law according to the "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, which is a contract for MoPac securities and it must be enforced. Not to first evaluate Class B under due process as above before using Section 20a of the Act, is against Article 1, Section 10, because it is impairing the obligation of contracts, or the MoPac Charter, which is the contract.

Not to first evaluate Class B under due process of law before recapitalization takes place is against the 14th Amendment— Also: "nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Not to first evaluate Class B under due process of law is also against the 16th Amendment in this case. The 16th Amendment must be enforced by first getting a due process of law evaluation of my Class B shares so as to arrive at the higher value for Class B shares. According to the due process evaluation of Class B there will come an addition $615 to $795 million value accruing to Class B. Under the "Recapitalization Plan," between $615 to $795 million

values are being transferred from Class B equity shares to the Class A $5 pfd. $100 value stocks when the Class A $5 pfd. is converted into the convertible pfd., and the convertible pfd. is later converted into the new MoPac common stocks. Out of all these values transferred from Class B to class A $5 pfd., Mississippi River Corp. is favored by an increase of over $400 million values from Class B equity bearing common to her 62% control of Class A $5 pfd., for which over $62 million in taxes is owed by Mississippi to the I.R.S. for the Class B values transferred from Class B to her Class A $5 pfd. when the Class A $5 pfd. is finally converted into the new MoPac common of the Recapitalized Company.

This MoPac Civil Action Case #74-471 was originally instituted in the United States District Court, District of New Jersey. The original complaint was filed on April 3, 1974 for Review of Administrative Action of the Interstate Commerce Commission, Finance Docket #27346, with Amended Complaint to supplement the original complaint filed May 7, 1974.

In attending the I.C.C. Hearings in Washington, D.C. Sept. 17 to 20, 1973, I pleaded to the I.C.C. to enforce their MoPac I.C.C. "Agreed System Plan" of Reorganization or MoPac Charter of 1954-1955, 290 I.C.C. 477, which is a law of the United States. This 290 I.C.C. 477 calls for a due process of law evaluation of Class B equity bearing common stock. This due process evaluation gives Class B a Retained Income of $349 million and property values of $545 million or $894 million total for MoPac's 39,731 shares of Class B, as of December 31, 1972. By not first evaluating Class B under due process of law to find its true value,

the I.C.C. by the use of Section 20a of the Act is forcing all Class B stockholders to give up their $22,500 value Class B, for a value of only $2,450 per share of Class B. Division 3 is ignoring my Civil Rights which are secured by the Constitution of the U.S.

Commission Division 3 states as follows on page 64 of Finance Docket #27346, December 6, 1973 MoPac decision to issue new securities: "Moreover the Commission's jurisdiction under 20a is plenary and exclusive and independent of any other Federal authority. * * * Since the matter involved in this proceeding comes within the purview of Section 20a, our jurisdiction in the proceeding is supreme * * *." That may be so, but first the I.C.C. should see to it that my Class B stocks are evaluated under due process, and after that the I.C.C. should fulfill their constitutional duty under Section 20a of the Act. Section 20a(2)(a) does not allow such goings on against the investing public interest. Congress passed 20a to protect public investors through the I.C.C. policeman in the issuance of railroad securities. On this instant case Division 3 is not obeying its oath of office to protect the public.

Questions Presented

Regarding the 16th Amendment to the Federal Constitution, doesn't it also apply to big corporate structures like Mississippi River Corporation which has had a benefit of over $40 million values and has not paid taxes on it, simply by converting her 62% holding of Class A $5 pfd. $100 value stocks into new equity bearing MoPac common stocks by Commission Division 3 permission under Section 20a without first evaluating Class B equity bearing common under due process of law to find Class B's real true value according to the MoPac's Charter—290 I.C.C. 477, so that dissenter Class B holders like myself could get equivalent value for my Class B as the values I surrendered by converting my shares of Class B into the new common?

Answer to Question No. 1

The 16th Amendment cannot be enforced against Mississippi River Corporation as long as my Class B equity bearing common stocks are not being evaluated under due process of law according to MoPac's Charter—290 I.C.C. 477. Under Section 20a of the Act, it is the duty of the Commission to first evaluate Class B equity common shares under due process of law—290 I.C.C. 477, before allowing the $5 MoPac preferred to become converted into new common. Only that due process will solve this MoPac case constitutionally.

The I.C.C. is trying to stop me from getting due process of law evaluation for my Class B by trying to dismiss my Jurisdictional Statement to the Supreme Court October Term, 1975, #1815. I am trying to use Rule 19 Joinder of persons needed for just Adjudication to get the I.R.S. into my MoPac case in order that the I.R.S. becomes enabled to use their law expertise and their command of respect everywhere, to help me get a Federal Court order, ordering the I.C.C. to evaluate my Class B under due process, according to 290 I.C.C. 477 or MoPac Charter. This higher valuation of Class B will enable the Internal Revenue Service to collect over $100 million capital gains taxes from Class A $5 pfd., $62 million of this coming from Mississippi River Corporation.

Reading paragraph 2 of page 1 of the lower Court's Opinion (Appendix B) dated April 20, 1976, wherein the following is stated:

"The terms of the plan of recapitalization have previously been settled and approved and reported in a comprehensive opinion and judgment by Judge Weinfeld in a class action brought by Class B stockholders of MoPac, to which class plaintiffs here belong," don't I have a constitutional right to ask the I.C.C. for a due process of law evaluation of my Class B equity bearing common stocks according to the 5th Amendment "due process of law" by following the MoPac I.C.C. "Agreed System Plan" of Reorganization or MoPac Charter, 290 I.C.C. 477 in a "Plan of Recapitalization" under Section 20a without the lower Court trying to confuse the issue of my suit that I have in that court which is for that honorable lower Court to issue a court order, ordering the I.C.C. to evaluate my Class B stocks under due process of law according to the MoPac Charter of 1954-1955, without the lower Court trying to shift my present suit into another case of Hon. Judge Weinfeld's Opinion and Judgment of a class action suit that has nothing to do with me nor with my present case against the I.C.C. for a due process of law evaluation of my Class B?

Answer to Question No. 2

Plaintiff's case has nothing to do with Judge Weinfeld's class action case because this plaintiff was never a member of any class action, either on dividends or recapitalization. He voted all of his Class B shares against the "Plan of Recapitalization" or "Settlement Agreement" at

the June 15, 1973 Section MoPac Stockholders' Meeting in Saint Louis and he has been fighting in the courts since then for a due process of law evaluation of his Class B shares under MoPac's Charter.

Plaintiff has a constitutional right under the 5th Amendment to ask the I.C.C. through a Federal Court Order ordering the I.C.C. for a due process of law evaluation of his Class B equity bearing common shares because the I.C.C. used Section 20a of the Interstate Commerce Act to grant authority to MoPac to issue new securities without the I.C.C. first evaluating Class B under due process, according to 290 I.C.C. 477 to find its real true value, but instead, the I.C.C. said $2,450 value per Class B was "Fair Value" (see p. 58 of Finance Docket #27346, I.C.C. Dec. 6, 1973 Decision) by following Judge Weinfeld's "Fair Value" statement regarding Class B.

If it is as stated on page 9 of Division 3 in their December 6, 1973 MoPac Decision, Finance Docket #27346, that: "It is apparent that MoPac is in a relatively healthy financial condition and that it has a reasonably favorable margin for future contingencies," the fact that MoPac is in a healthy condition, does that give Commission Division 3 a legal right to operate on MoPac under Section 20a of the Act and take away the majority values from my Class B equity bearing common and transfer them to the Class A $5 pfd. $100 value stock by allowing this $5 pfd. to be converted into a new equity bearing common without first evaluating Class B under due process according to 290 I.C.C. 477?

Answer

Division Commission 3 has no right to take away the values of Class B without giving my Class B its equivalent values for values surrendered in a solvent, prosperous railroad company such as MoPac. To do otherwise is against the 5th Amendment. Even Commission Division 3 admits on page 35 of its December 6, 1973 Decision, Finance Docket #27346 that "it is not disputed, that should the new preferred shares be converted into new common, as contemplated in the plan, the equity position of the Class B stockholders would be reduced from 61½% to 25½%." This is a loss of over 67% of my Class B value. But this does not include the property and land rights or mineral rights values of over $540 million as of December 31, 1972, that belongs to Class B. The Commission Division 3 is acting as if Class B was a stock in a bankrupt company, whereas Class B I believe has earned over $1,000 per share net on an I.C.C. bookkeeping basis in 1974. I believe that Commission Division 3 has acted unjustly and all in favor of MoPac, an Intervening Defendant in my Civil Action #74-471 before the lower Court. By not permitting a due process of law evaluation of my Class B shares, the I.C.C. is not only helping to defraud me out of over $20,000 per Class B in values, but it is also helping to defraud the I.R.S. out of over $100 million on capital gain taxes that the higher Class B value would yield to the I.R.S., $62 million coming from Mississippi River Corporation.

Wood case—*Wood* v. *United States,* 132 F. Supp. 586 (S.D. of N.Y. 1955)

Isn't it against the *Wood* case to allow the conversion of the Class A $5 pfd. $100 value stocks of MoPac into

a cumulative preferred stock in a "Plan of Recapitalization" under Section 20a of the Act, and then one year later convert the $5 cumulative $100 value preferred stocks into new equity bearing common stocks, and at the same time convert the Class B equity bearing MoPac common into new common, without first evaluating the Class B common under due process of law according to the MoPac I.C.C. Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, which is a law of the United States, in order to finding the real true value of Class B equity bearing common for a fair exchange into the new common on a value for value exchange basis?

Answer to Question No. 4

In the *Wood* case it has been brought out that dissenters cannot be held in any class action because it is against the 5th Amendment of due process of law in a solvent railroad under the Interstate Commerce Act as passed by Congress. It is against the public interest, which is the investing public in railroad securities.

Question No. 5

If the Interstate Commerce Commission is fair and equitable and for the public interest, which is the investing public in railroad securities, why did the Commission at a General Session of the I.C.C. on the 8th day of July, 1966 in re: *Mississippi River Fuel Corp., et al.* v. *Rose Slayton, et al.,* No. 17,836, U.S. Ct. of Appeals, 8th Cir. (F. P. # 22951) voted *not* to authorize the filing by the General Counsel of a brief *amicus curiae* in the above entitled case;

Chairman Bush voting to direct the General Counsel to file the aforesaid brief in support of the petition for a writ of certiorari. (See Appendix K.)

A true copy.

Secretary of the Interstate
H. NEIL GARSON
Commerce Commission

ANSWER TO #5

This shows that the Commission as a whole had been biased against the Missouri Pacific Railroad Class B equity bearing common stockholders' interests on July 8, 1966. It seems to me that the Commission is still biased against Class B stockholders from what they have done against the interests of little people in railroad common stocks.

Statute Involved

Section 20a (February 25, 1920, amended August 9, 1935, August 2, 1949) (49 U.S.C., Section 20a) of the Interstate Commerce Act.

Section 20a(2)(a). The Commission shall make such an order only if it finds that such issue or assumption (a) is for some lawful object within its corporate purposes, and compatible with the public interest which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

CONSTITUTIONAL PROVISIONS

ARTICLE I

Section 10. "No state shall * * * make any ex post facto law, or law impairing the obligation of contracts, * * * ."

ARTICLE V

No person shall be * * * deprived of life, liberty, or property without due process of law; * * * ."

ARTICLE XIV

Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

Statement of the Case

Appellant James C. Gabriel, Pro Se, is a Missouri Pacific Railroad Class B equity bearing common stockholder who is suing for the Federal Courts to issue an order, ordering the Interstate Commerce Commission to evaluate Appellant's Class B equity bearing common stocks under due process of law to find their real true value according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, a law of the United States that must be enforced, in order to find Class B's real true values, so that Appellant may become enabled to exchange his Class B stocks for new MoPac common shares of the Recapitalized Missouri Pacific Railroad, on a value for value basis. A due process of law evaluation is his lawful right under the Constitution of the United States,

and also under the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1955 or MoPac Charter which gives the real true value for the Class A pfd. $100 value shares, and the Class B equity bearing common shares which are awarded "only a small amount in actual par value," but are made "the residuary beneficiary of any future prosperty the property may enjoy." (See p. 624 and 625-290 I.C.C. 477.)

The MoPac Class B original suit was commenced by *Betty Levin* v. *Mississippi River Corporation* in 1967, which was later joined by Alleghany Corp. and Robert Le Vasseur for better dividends for the MoPac Class B equity bearing common stockholders. It was later made into a class action with respect to dividends by Honorable Frederick van Pelt Bryan U.S.D.J., Southern District of New York (67 civil 5095) on October 9, 1968, that Class B holders were not getting enough dividends on their Class B. No intervenors were permitted into the case after December 20, 1968. See U.S.D.C. S.D. of New York Filed October 10, 1968-67 Civ. 5095 Notice of Settlement Order Betty Levin et al., Plaintiffs against Mississippi River Corporation et al., Defendants.

On December 18, 1972, a "Settlement Agreement" was made "dated as of December 18, 1972 by and between Alleghany Corporation, MoPac and Mississippi River Corporation," to sell to Mississippi River Corp. all of the 53% holdings of Alleghany's Class B equity MoPac shares at $2,450 value per Class B, or for about $97 million for the entire 39,731 shares of Class B. This price was so cheap that Mississippi wanted all the Class B at that price and used the Section 20a of the Interstate Commerce Act for

a "Plan of Recapitalization" to take the Class B, equity shares at a fixed price and convert all of her 62% Class A $5 preferred $100 value shares into new equity bearing common based upon a value of $2,450 per Class B without first making a due process of law evaluation to find Class B real true value, which under due process is about $22,500 per Class B which is according to MoPac's Charter or "Agreed System Plan" of Reorganization of 1954-1955, 290 I.C.C. 477, which would give to the Class B equity common shares about $22,500 per share value, made up on $349 million Retained Income and $545 million in property values as of December 31, 1972, or a total of about $894 million for the 39,731 Class B, all these values belonging to Class B MoPac common.

The "Plan of Recapitalization" called for the conversion of the 1,860,000 shares of Class A $5 pfd. into new equity common by adding to the $5 pfd. over $615 million to $797 million values by transferring these values from Class B and giving them to Class A $5 pfd., thereby increasing the Class A $5 pfd. $100 value stocks to a value of about $430 per share simply by converting the Class A $5 pfd. into a new $5 convertible preferred and then converting that convertible preferred into the new MoPac equity bearing common stocks. That 1,860,000 Class A $5 pfd. became through conversion 1,860,000 shares of MoPac $5 cumulative preferred, which in turn were converted into 1,860,000 shares of new equity bearing common, having now a new status by now having a claim on all of the Retained Income, lands, properties, mineral rights, worth over $800 million dollars that formerly all belonged to the Class B equity bearing common. This was all done on the basis of the Class B given a value of only $2,450 per share by Com-

mission Division 3 without a due process of law evaluation of Class B by Division 3 according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477, under the due process evaluation would have given Class B a value of about $22,500 per share if Commission Division 3 had followed the MoPac Charter or Contract of 1953-1955. Instead of doing that, Commission Division 3 simply said that $2,450 value per Class B was "fair value" (see p. 58 Finance Docket #27346, Order of December 6, 1973 by the Commission) by following Hon. Judge Weinfeld's order that $2,450 per Class B was "fair value." On page D-5 of the MoPac May 8, 1973 Prospectus to its stockholders, Hon. Weinfeld states as follows: "The Court's role is a more delicate one which requires a balancing of likelihoods rather than an actual determination of the *facts* and *law* in passing upon whether the proposed settlement is fair, reasonable and adequate to the Class B stockholders and MoPac."

This shows that even Hon. Weinfeld was not basing his decision on "facts and law." So why did the I.C.C. Division 3 of the Commission follow Hon. Weinfeld?

This unorthodox, unconstitutional and unlawful method of evaluation of other peoles' properties without due process, reduces the value of Class B equity bearing common shares from 82½% to 24½% ownership of the Missouri Pacific Railroad, and increases Class A $5 pfd. value from 17½% to 75½% ownership of MoPac, or from $186 million to about $801 million. At the same time it reduces Class B to $97 million value from $894 million value. But the most important part is that the Class A $5 pfd. $100 value stock has now become an equity bearing common, by not having a due process law evaluation of Class B.

But this transfer of values from Class B equity bearing Common to the Class A $5 pfd. of between $615 million to $797 million values require taxes to be paid to the U. S. Government I.R.S. of over $100 million by Class A $5 pfd., 62% of which is owned by Mississippi River Corporation, which benefits over $400 million in Retained income and property value that Commission Division 3 helped its friends in Class A $5 pfd. get in this so-called "Plan of Recapitalization" converted by Mississippi which controls Mo-Pac. This means that Mississippi River Corp. owes the I.R.S. over $62 million in Capital Gains Taxes according to the 16th Amendment to the Federal Constitution. That is the reason why the ICC Division 3 does not relish or wants a due process of law evaluation of my Class B equity bearing Common because it would raise the values of Class my B to about $22,500 per share which would mean that Mississippi would have to pay up these taxes to the I.R.S. The I.C.C. is a defendant in my MoPac Case in the Federal District Court, District of New Jersey, Civil action #74-471, and I am suing the I.C.C. in order to get a due process of law valuation of my Class B equity share for a real true value of my shares for a value for value exchange of my Class B for the new MoPac Common.

Alleghany Corporation was not really representative of the minority Class B holders as she was portrayed to be by the Weinfeld Court and by the I.C.C. Alleghany had a tax advantage in disposing of its Class B at an arbitrary low price value of $2,450 per share and Alleghany was pressured by the I.C.C. to dispose of its Class B in order

to be allowed by the I.C.C. to remain as a motor carrier under I.C.C. jurisdiction because Alleghany owns Jones Motor Co. and saves several million dollars annually in I.R.S. penalty taxes by remaining as a motor carrier under the I.C.C. jurisdiction. Besides, Alleghany controls Investors Diversified Services Inc., a $7 billion Investment Trust Complex and as a motor carrier Alleghany is not under the S.E.C. Federal law supervision in their investments. Some favoritism under the I.C.C. jurisdiction. The older background facts are very important and essential for a full understanding of this Jurisdictional Statement. (See Alleghany Corp. Control and Purchase Jones Motor Co. # MC-F-10444 in Appendix.)

Not to give Class B a due process of law evaluation by the Interstate Commerce Commission is against the 5th Amendment of due process, and Article 1, Section 10 of the Constitution—"No state shall * * * pass any ex post facto law, or law impairing the obligation of contracts, * * * ." The I.C.C. by using Section 20a is impairing the MoPac Charter, 290 I.C.C. 477 or "Agreed System Plan" of Reorganization of 1954-1955 which is a contrast, and Class B must be evaluated under due process of law first according to the "Agreed System Plan." The law is on the side of Class B shares and the law must be enforced for the sake of justice. In my opinion, the decision of the Commission Division 3 is based strictly on the basis of MoPac's original application and supporting document. Division 3 placed no weight on my testimony either at the I.C.C. Hearing on September 17 to 20, 1973, Finance Docket # 27346, in Hearing Room A before the I.C.C.'s Honorable William J. Gibbons, Administrative Law Judge or on my brief dated October 15, 1973 to the I.C.C. asking the I.C.C.

to give my Class B shares a due process of law evaluation. Nor did the I.C.C. pay any attention to my January 14, 1974 Petition to the I.C.C. for Reconsideration for a due process of law evaluation of my Class B shares according to 290 I.C.C. 477 "Agreed System Plan" or MoPac Charter as I brought it out on pages 13 and 14 that in a due process evaluation my Class B was worth around $25,000 per share, based upon its Retained Income of $349 million and $545 million in property values or about $894 million for the 39,731 shares of Class B.

The opinion of Division 3 was written regardless of value appeared in the record of the Hearing Room on the MoPac Class B stocks before Honorable Judge Gibbons. It was simply a matter of what evidence Division 3 wanted to phase the weight on. They apparently completely disregarded my objection to the Commission Division 3's use of Section 20a of the Act before a due process of law of Class B was first made to find out the real true value of Class B equity bearing Common without due process the I.C.C. gave Class B only a small portion of its real value, all for the benefit of Mississippi River Corporation who had concocted the Plan of Recapitalization of 12,450 per Class B. Mississippi River Corp. apparently wants monopoly control of MoPac properties for a small Wall Street clique. Even the I.C.C. says that Class B equity will be reduced from 61½% to 24½% when MoPac's new convertable preferred, which is the former Class A $5 pfd. $100 value stocks, are converted into the new MoPac equity bearing common.

Permission under 20a should not be given by the Commission without first evaluating Class B under due process

of law according to MoPac's Charter, 290 I.C.C. 477, because by doing so it is taking away over $20,000 value of Class B from my Class B shares for the benefit of Mississippi River Corporation. This sort of action by the Commission Division 3 is not "fair, reasonable and in the public interest" and in my interest because it violates section 20a (2)(a) of the Interstate Commerce Act as passed by Congress in 1920 which was supposed to protect the investing public in railroad securities, and not to help harm them.

If what Commission Division 3 says is true, that $2,450 per Class B is "fair value," that it is fair, reasonable and equitable and in the public interest, and the public interest is also the MoPac stockholders' interest, then why is it that the Interstate Commerce Commission fights against me, not to give me a due process of law evaluation of my Class B? Isn't their action and court fight Civil Action 74-471 against my getting the I.C.C. ordered to get my Class B equity shares evaluated under due process of law to find their real true value for a fair exchange of my Class B into the new MoPac common against the Constitution, 5th and 14th Amendment and also Article Section 10 and against Section 20a(2)(a)? Doesn't this action on their part prove that they are not telling the truth?

Plaintiff, Pro Se, prays that this Honorable Court rule to have his MoPac Class B Common Stock which possesses MoPac's equity, be evaluated under due process of law by the I.C.C. according to the MoPac I.C.C. "Agreed System Plan" of Reorganization or Charter of 1954, 1955, which is still a law of the U.S. because it was approved and certified both by the ICC and the Federal District Court of jurisdiction in these proceedings in Saint Louis. It is the sworn

duty of the ICC to obey its own laws that the ICC brought about, and the MoPac "Agreed System Plan" of Reorganization is one of the laws that the ICC brought about.

The Questions Are Substantial

The questions are substantial and require plenary consideration by this Court because the lower Court, the I.C.C., MoPac and Mississippi are violating my constitutional rights in the following way:

1. Plaintiff-Appellant James C. Gabriel, Pro Se has been suing in the Federal District Court of New Jersey in order to get a Court Order, ordering the I.C.C. to evaluate Plaintiff's Class B MoPac Common equity bearing stocks under due process of law to find their real true value according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955 or MoPac Charter, 290 I.C.C. 477. This MoPac Charter is a contract for the value of MoPac securities. Only by due process evaluation of my Class B will I become enabled to get value for value in exchange for my Class B equity bearing common shares for new securities of the Recapitalized MoPac.

This constitutional right was denied by the lower Court which had decided against my Brief on the Merits of the Case. I had asked for a due process evaluation of my Class B shares, but the lower Court evaded the issue of due process of law evaluation and instead stated in their April 20, 1976 opinion on page 1 (see Exhibit C), 1st paragraph that I am a dissatisfied MoPac preferred stockholder. But I am not a preferred stockholder, I am a Class B equity bearing common stockholder, and I am suing to get a due

process of law evaluation of my Class B shares according to 290 I.C.C. 477.

The lower Court has ignored my plea for due process of my Class B, which is I.C.C. duty to evaluate it, but instead entered an Order or Judgment on May 6, 1976 affirming the 20a (see Exhibit B) decision by the I.C.C.

Section 20a was passed by Congress in 1920—in order to protect the railroad securities investing public from issuance of railroad securities by corrupt railroad managements that would defraud these investors with practically worthless stocks. The I.C.C. was set up as policemen in Section 20a of the Act against such issuance of bad securities. But what do we see in this present MoPac case? The Commission Division 3 has ignored its duty to protect the railroad securities investing public by not evaluating my Class B equity bearing common shares under due process, 290 I.C.C. 477 to find their real true value for a value for value exchange of my Class B common into new securities of the Recapitalized MoPac. It is the duty of the I.C.C. to evaluate Class B under due process of law first, before it allows MoPac and Mississippi to exchange my Class B for a value of $2,450 per share, on which $2,450 value per Class B basis Mississippi River was allowed to convert her Class A pfd. $100 value stocks into accumulatives pfd. and later to convert that cumulative preferred stock into the new MoPac equity bearing common stock. How could that I.C.C. be allowed to do this without first giving Class B a due process of law evaluation according to the charter to find the true value basis of Class B in relation to the Class A $5 pfd. MoPac stock values?

To begin with, Class B has a due process of law value of around $22,500 per share and not a value of $2,450 per share which the I.C.C. says is "Fair Value."

Not to evaluate my Class B under due process before recapitalizing MoPac under Section 20a is against the 5th Amendment, and the 14th Amendment, Section 1 of "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It is also against Article 1, Section 10, which states: No state shall * * * pass any * ** ex post facto law, or law impairing the obligation of contracts * * *." The MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or Charter, 290 I.C.C. 477, is a contract for MoPac securities. Not to evaluate Class B under due process of law as stated above, before executing a "Plan of Recapitalization" by the I.C.C. under Section 20a is not constitutional because it impairs the obligation of the MoPac I.C.C. Charter or MoPac Contract of 290 I.C.C. 477 or "Agreed Sytem Plan." To do so is also against Section 20a(2)(a) because it is against the public interest or investor interest because the Class B equity bearing common stockholders are in this way being defrauded out of over $20,000 value per Class B. Besides, the value given to the Class B by that I.C.C. is $2,450 value as "fair value" or about $97 million for its 39,731 Class B shares instead of its due process of law value of about $22,500 per share or $894 million, is from $615 million to $797 million value less than what the 39,731 shares of Class B are worth, which millions of dollars in values are transferred to the MoPac

Class A \$5 pfd. \$10 value stocks. With Mississippi River Corporation owning 62% of this pfd., she benefits free over \$400 million for which she pays no taxes.

Section 20a Plan of Recapitalization was done primarily under the guidance plan of Mississippi River Corporation, to take advantage of the innocent small Class B stockholders to take away their property without due process under the guise of "Recapitalization." Please help small investors.

CONCLUSION

For the foregoing reasons this Honorable Court has jurisdiction in the matter which presents important and substantial questions requiring plenary review.

The following phrases by Commission Division 3 do not satisfy my constitutional rights to a due process of law evaluation of my Class B equity bearing common stocks according to the MoPac I.C.C. "Agreed System Plan" of Reorganization of 1954-1955, or MoPac Charter, 290 I.C.C. 477:

"that it is the public interest."
"fair and reasonable to all parties."
"Rights of the stockholders are part of the public interest."
"Incumbent upon the Commission to see that interests of minority stockholders are protected."
"Just and reasonable as to those stockholders."

Then suddenly, Commission Division 3 comes out with the hard truth, as follows:

"We hold that the proposed plan is fair and reasonable to all stockholders and otherwise fully complies with the

requirements of Section 20a(2)." This is the way Commission Division take us over for the benefit of their Class A \$5 pfd. \$100 value stock friends—Mississippi River Corporation which gets its \$5 Class A \$100 value stocks converted into MoPac equity bearing common, suddenly laying claim to MoPac's Class B Retained Income and Property values worth over \$800 million as of December 31, 1972, property which Mississippi receives free. Mississippi which controls 62% of all Class A \$5 pfd., receiving over \$400 million values free from Class B, not even having to pay any income taxes on this great windfall, thanks to Alleghany, Mississippi and MoPac I.C.C. Division 3 friends who do as they please in that Government agency by not first evaluating Class B under MoPac's Charter before executing their "Plan of Recapitalization" under Section 20a of the Act.

Mississippi is using MoPac which it controls, for its own selfish needs, using a "Plan of Recapitalization" under 20a to take over other small people's property without paying for it at its real true value, but at Mississippi's own price of \$2,450 value per share of Class B, at which \$2,450 per Class B Mississippi converts her \$5 preferred into the new common without first evaluating Class B under due process according to the MoPac Charter, 290 I.C.C. 477.

By this unorthodox method, Commission Division 3 is violating Section 20a(2) of the Act, and violating the 5th Amendment on due process of law, violating the 14th Amendment, Section 1, line 2: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I have a privilege of getting my due process evaluation of my Class B property, but I am not being allowed by the I.C.C. to do so by being deprived of my rights.

The I.C.C. by not evaluating my Calss B under due process first, before executing the Plan of Recapitalization under Section 20a, is violating Article 1, Section 10. The contract in this instance is the MoPac Charter, 290 I.C.C. 477, a contract that the I.C.C. itself made in the MoPac I.C.C. "Plan of Reorganization" in 1954-1955.

The I.C.C. says on page 35 of F.D. #27346 of I.C.C. Dec. 6, 1973 Decision that "it is not disputed, that should the new preferred shares be converted into new common, as contemplated in the plan, the equity position of the Class B stockholders would be reduced from 61½% to 25½%." Therefore, the $2,450 value per Class B given to it by the I.C.C. was not based upon facts and law. Please note, *these figures do not include over $13,000 value per Class B in property.*

This case represents very important matters regarding my rights under the Constitution of the United States, of Article 1, Section 10, the 5th Amendment and the 14th Amendment.

For all of these reasons, this Honorable Court has jurisdiction in this matter which presents important and substantial matters requiring plenary review.

Respectfully submitted,

James C. Gabriel, *Pro Se,*
Plaintiff-Appellant
P.O. Box 94, Sea Girt, N. J. 08750
Telephone (201) 899-6200

Certificate of Service

I, James C. Gabriel, *Pro Se,* Petitioner, do hereby certify that 3 copies of each of the above and foregoing Petitioner's Jurisdictional Statement have been deposited in the United States Mail, postage prepaid, on the 17th day of September, 1976, to the following addressees:

Harold L. Reisner
Assistant U.S. Attorney
Federal Building
Trenton, N.J. 08608

Leon Leighton, Esquire
Milton Rosenkranz, Esquire
6 East 45th Street
New York City, N.Y. 10017

Hanford O'Hara
Office of the General Counsel
Interstate Commerce Commission
Washington, D.C.

John Charles Vaiani
1313 River Ave.
Point Pleasant, N.J.

William R. Wessen
1550 Ocean Ave.
Mantoloking, N.J.

/s/ James C. Gabriel
James C. Gabriel, *Pro Se*
Plaintiff-Appellant

APPENDICES

APPENDIX A

Notice of Appeal

United States District Court
District Of New Jersey

James C.Gabriel,Pro Se, Plaintiff, v. United States Of America and Interstate Commerce Commission, Defendants, Missouri Pacific Railroad Company, Intervening Defendant.	Civil Action #74-471
	Notice Of Appeal To The Supreme Court Of The United States Of America For My Above Captioned Case

To: The Clerk Of The United States District Court, District Of New Jersey

Sirs:

The undersigned James C.Gabriel,Pro Se,hereby appeals to the Supreme Court of the United States of America for his above Captioned Case,Civil Action #74-471; Appellant is appealing from each and every order,ruling,letter opinion,memorandum,upon which the judgment or order was based upon. Plaintiff,Pro Se,is seeking to get a due process of law evaluation of his Class B equity bearing MoPac Common-shares according to the Constitution of the United States.

ORIGINAL FILED
JUL 19 1976
ANGELO W. LOCASCIO, CLERK

Dated:Monmouth County of N.J.
July 15th,1976

Respectfully submitted,
James C. Gabriel, Pro Se
James C.Gabriel,Pro Se
P.O.Box 94,Sea Girt,N.J.08750
Phone (201) 889-6200

Service to:Clerk of the Court,one original and seven copies.

APPENDIX B

Judgment

PLR:kew
74 1380
74 1383
74 1384

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES C. GABRIEL, Pro Se, JOHN CHARLES VAIANI, Pro Se, WILLIAM R. WESSON, Pro Se, Plaintiffs	:	CONSOLIDATED CIVIL ACTIONS
v.	:	74-471 74-470 74-469
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants	:	JUDGMENT
-and-	:	
MISSOURI PACIFIC RAILROAD COMPANY Defendant-Intervenor	:	

This matter, having been opened to the Court by James C. Gabriel, John Charles Vaiani and William R. Wesson, plaintiffs pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Thomas E. Kauper, Assistant Attorney General of the United States, John H. D. Wigger, Esquire, appearing, Fritz R. Kahn, General Counsel for the Interstate Commerce Commission, Hanford O'Hara, Esquire appearing, Milton Rosenkranz, Esquire and Leon Leighton, Esquire appearing, and the Court having considered all of the documents filed as well as the briefs and oral argument of counsel and the Court having filed an opinion on April 20, 1976 and for good cause shown;

It is on this 7th day of May, 1976

ORDERED and ADJUDGED that final order of the Interstate Commerce Commission questioned herein be and the same hereby is AFFIRMED without costs.

JAMES HUNTER, III
UNITED STATES CIRCUIT JUDGE

LAWRENCE A. WHIPPLE
CHIEF, UNITED STATES DISTRICT JUDGE

CLARKSON S. FISHER
UNITED STATES DISTRICT JUDGE

ORIGINAL FILED
1976
ANGELO W. LOCASCIO, CLERK

APPENDIX C

Opinion of the U.S. District Court, District of New Jersey

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

JAMES C. GABRIEL, Pro Se, JOHN CHARLES VAIANI, Pro Se, WILLIAM R. WESSON, Pro Se Plaintiffs	:	CONSOLIDATED CIVIL ACTIONS
vs.	:	74-471 74-470 74-469
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants	:	OPINION
- and -	:	
MISSOURI PACIFIC RAILROAD COMPANY, Defendant-Intervenor	:	

APPEARANCES: JAMES C. GABRIEL, Pro Se
JOHN CHARLES VAIANI, Pro Se
WILLIAM R. WESSON, Pro Se

THOMAS E. KAUPER, ESQ.,
Asst. Attorney General
By: JOHN H. D. WIGGER, Esq.,

- and -

JONATHAN L. GOLDSTEIN, ESQ.,
United States Attorney,
By: RONALD L. REISNER, ESQ.,
For the United States of America

FRITZ R. KAHN, ESQ.,
General Counsel,
By: HANFORD O'HARA, ESQ.,
For Interstate Commerce Commission,

MILTON ROSENKRANZ, ESQ.,
LEON LEIGHTON, ESQ.,
For the Defendant-Intervenor

BEFORE: HUNTER, Circuit Judge
WHIPPLE and FISHER, District Judges

FISHER, District Judge

Plaintiffs, three disappointed preferred stockholders of the Missouri-Pacific Railroad Company, (hereinafter MoPac), brought this action to set aside and annul an order of the Interstate Commerce Commission which granted authority to MoPac under the Interstate Commerce Act, 49 U.S.C. 20a to issue securities in accordance with a plan submitted to the I.C.C. to recapitalize. Plaintiffs and others had opposed the plan before the I.C.C. Jurisdiction is conferred by virtue of §§1336(a), 1398(a), 2284, 2321-2325, 2401 of Title 28 U.S.C. and §1009 of Title 5. The purpose of the suit is to have this court set aside the determination of the I.C.C.

The terms of the plan of recapitalization have previously been settled and approved and reported in a comprehensive opinion and judgment by Judge Weinfeld in a class action brought by Class B stockholders of MoPac, to which class plaintiffs here belong. Levin v. Mississippi River Corp., 59 F.R.D. 353, (S.D.N.Y. 1973), aff'd. sub. nom. Wesson v. Mississippi River Corp., 486 F.2d 1398 (2d Cir. 1973), cert. denied 414 U.S. 1112 (1973).

Upon reorganization in 1956 under Section 77 of the Bankruptcy Act (11 U.S.C. §205), MoPac, a Missouri corporation, was authorized to issue two classes of stock: Class A (issued to former preferred stockholders) and Class B (issued to former common stockholders). Class A stockholders had certain preferences as to the payment of dividends and in the event of dissolution of the company. Each share of both types had one vote: 1.9 million shares (98%) were held by Class A stockholders, and 40,000 shares (2%) were held by Class B stockholders. Class A holders thus had operational control over the corporation, but on mergers, consolidations or reorganizations involving issuance of additional stock or the alteration of rights of the respective Classes, a majority of each Class was required to approve the action proposed. This situation caused a conflict between the two Classes, a conflict aggravated by the fact that Mississippi River Corporation, (Mississippi), had by 1963 acquired a majority of the Class A shares, while Alleghany Corporation (Alleghany) held a majority of the Class B shares.

In December of 1967 a class and derivative action was commenced on behalf of all Class B stockholders (Alleghany and others) against MoPac, Mississippi, and three directors of MoPac, to compel the payment of higher dividends, past and future. In that action, Levin v. Mississippi River Corp., 59 F.R.D. 353 (S.D.N.Y. 1973) aff'd. mem. 486 F.2d 1398 (2d Cir. 1973), cert. denied 414 U.S. 1112, 38 L.Ed.2d. 739, reh. denied 415 U.S. 939, it was also alleged that certain defendants had engaged in a conspiracy to "freeze out" Class B stockholders in various ways (improperly limiting dividends etc.) and that such acts were also in violation of the Securities Exchange Act and rules thereunder. Plaintiffs sought various types of relief from the Court, including an order compelling payment of higher past and future dividends.

After extensive discovery was undertaken by the parties in the succeeding months and years, during which time efforts at settlement were also pursued, a settlement was finally reached and presented to the court,[1] on the basis of a restructured capitalization which would, if consummated, eliminate the controversy between Class A and Class B shareholders. In March 1973, the district court approved the settlement (59 F.R.D. at 373) and its decision was upheld on appeal, (486 F.2d 1398) and certiorari was denied.

Under the proposed settlement, which the court approved, a majority of the minority Class B stockholders could reject the plan (59 F.R.D. at 374). Pursuant to the proposed settlement, and promptly following the court's decision, MoPac, in April 1973, filed its application with the Commission under Section 20a of the Interstate Commerce Act, 49 U.S.C. §20a, for authority to issue the various stocks called for in the recapitalization plan. After notice of the application was given to all MoPac stockholders, hearings were held, at which plaintiffs herein and others expressed their opposition to MoPac's application.

At a special meeting of MoPac stockholders, held on June 15, 1973, 86.5% of the outstanding shares of Class A stock were voted in favor of the recapitalization plan and 83.4% of the outstanding shares of Class B stock were voted in favor of the recapitalization plan. Among the minority shares in both classes (i.e. those shares not owned by either Mississippi or Alleghany), 95.5% of Class A shares present and voting were voted in favor of the plan and 84.7% of the Class B shares present and voting were voted in favor of the recapitalization plan.

(Footnotes at end of Opinion)

On December 14, 1973 Division 3, consisting of three Commissioners, issued its report and order granting MoPac's application. The order was made effective immediately, as time was of the essence in view of the deadline set forth in the settlement agreement. On December 28, 1973 the Commission issued an order denying petitions of plaintiffs and others to stay the effective date of the December 14, 1973 order. On January 23, 1974 the Commission issued its order denying petitions for reconsideration of the December 14 order and on March 4, 1974, the Commission issued an order denying petitions seeking a finding that an issue of general transportation importance was involved. On January 21, 1974 the MoPac plan of recapitalization was consummated. The instant actions were commenced on April 4, 1974 while the companion case in the Eastern District of Missouri, Labelle Gillespie v. United States, et al., Civil Action No. 74-239 C(2) was commenced on April 2, 1974. The Three-Judge Court which was convened in Labelle Gillespie v. United States, et al., supra, stated in their opinion:

> "The amendment to MoPac's Articles of Association was made in conformity to Missouri law. MoPac's Articles of Association expressly provide that the rights of all holders of capital stock of the company are subject to change, alteration, abrogation, or repeal in any matter permitted by the laws of Missouri. And Section 388.220, R.S. Mo., specifically authorizes modifications of the stock structure of railroad companies such as were here made. Hence, since far more than the requisite number of shareholders of each class of stock has voted in favor of the changes, the question before the Interstate Commerce Commission on the Section 20a application was a very narrow one of whether the issuance of the new securities to effectuate the plan and amendment to the Articles of Association would be 'for some lawful object within [MoPac's] corporate purposes and compatible with the public interest', and would be 'reasonably necessary and appropriate for such purpose'."

This court's function is limited. The decisions of independent regulatory agencies are generally sustained if within the authority of the agency's statutory power and are based upon appropriate findings which are in turn supported by substantial evidence. Consolo v. Federal Maritime Comm'n., 383 U.S. 607, 619-621 (1966); United States v. Pierce Auto Freight Lines, 327 U.S. 515, 535 (1945). This standard applies in cases involving Commission decisions under §20a of the Act. Chicago S.S. and S.B.R.R. v. United States, 221 F.Supp. 106, 109 (N.D.Ind. 1963). "The test of judicial review for an order of the Commission is whether the action of the Commission is supported by 'substantial evidence' on the record reviewed as a whole." Metropolitan Shipping Agents of Illinois, Inc. v. Interstate Commerce Commission, 342 F.Supp. 1266, 1268 (D.N.J. 1972).

The Commission's review in the MoPac recapitalization was limited under Section 20a(2) of the Act to a determination of whether the issuance of securities in connection with the plan would be "***for some lawful object within [the carrier's] corporate purposes, and compatible with the public interest ..." and "... is reasonably necessary and appropriate for such purpose".

The Commission, in an exhaustive report, found that the recapitalization was the result of extensive arms-length bargaining by MoPac, Mississippi and Alleghany and was analysed by independent financial and investment advisers specializing in corporation and transportation finance. The I.C.C. further noted that the settlement was approved by the court in the Levin case, after due consideration being given to the rights and possible remedies of each class of stockholders. The plan of recapitalization had been approved by a majority of each class of stockholders and by a majority of the minority stockholders of each class. The Commission further found that the allocation of new shares (1 new preferred share for 1 share of old Class A stock, and 16 shares of new common for 1 share of old Class B plus a cash sum) is reasonable and fair in view of the present and prospective worth of MoPac. The I.C.C. summarized in their report (p. 59) as follows:

> "In our opinion, the proposed plan is not contrary to the public interest. In fact, considering the benefits to each class of stock and the advantages to the carrier, it is our conclusion that the plan of recapitalization will be in the best interest of the stockholders and the carrier and will be compatible with the public interest."

The benefits of the recapitalization plan to MoPac include the elimination of the old class voting system and the dividend conflict which caused considerable dissension in the past and the fact that the Mississippi River Corporation would own a majority of both preferred and common stocks, thereby eliminating the old Class B veto power. As a result, MoPac will have greater management flexibility and stability and MoPac will be in a better position to consider and be considered for mergers and consolidations in the future.

As to the main contention of the plaintiffs asserting that they were unlawfully deprived of the value of their old Class B stock on the theory that the "book value" of the Class B stock was almost $9,000 a share, the I.C.C. pointed out that book value cannot be the measure of fair value of stock; rather, earnings must be considered and the capitalized earnings method is the proper means of analysis. See, Schwabacher v. United States, 334 U.S. 182 (1948); Boston & M.R. Securities

Modification, 275 I.C.C. 397, 431-33 (1950); Levin v. Mississippi River Corp., supra, at 369.

As to the other contentions of the plaintiff, they do not merit extensive comment since the Commission's findings on these issues were also warranted.[2]

We do not find any reason to differ with those findings. Our sole function is to determine whether the decision of the Commission is consistent with the public interest and lawful. We agree that it is and affirm those findings and decision.

Therefore, the order of the Commission questioned herein should be and is hereby affirmed.

Submit an Order.

Dated: April 20, 1976

APPENDIX D

Memorandum of the U.S. District Court, District of New Jersey

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

JAMES C. GABRIEL, Pro se, JOHN CHARLES VAIANI, Pro se, WILLIAM R. WESSON, Pro se,	:	CONSOLIDATED CIVIL ACTIONS
Plaintiffs	:	74-469 74-470 74-471
vs.	:	
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION	:	MEMORANDUM
Defendants	:	
- and -	:	
MISSOURI PACIFIC RAILROAD CO.,	:	
Defendant-Intervenor	:	

This Court, having fully decided this matter by opinion and subsequently entered an order dated May 6, 1976 affirming the decision of the Interstate Commerce Commission, is now presented with a motion by each plaintiff for reargument.

The motions are denied. The United States will submit an order.

JAMES HUNTER III, U.S.C.J.

LAWRENCE A. WHIPPLE, U.S.D.J.

CLARKSON S. FISHER, U.S.D.J.

Dated: May 19, 1976.

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JUN 2 1976
ANGELO W. LOCASCIO, CLERK

APPENDIX E

Letter Opinion of Clarkson S. Fisher, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON, N. J. 08605

CHAMBERS OF
CLARKSON S. FISHER
JUDGE

June 9, 1976

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Hanford O'Hara, Esq.,
Interstate Commerce Commission,
Washington, D.C. 20423

LETTER OPINION

Re: Gabriel et al. v. U.S.A. et al. 74-469

Gentlemen:

The Court is in receipt of yet another motion for reconsideration of the Court's judgment. After consultation with the other two members of the Court, I am authorized to advise all parties that the motion is denied.

The government will submit an order.

Very truly yours,

Clarkson S. Fisher,
U.S.D.J.

CSF/efr
c.c. Hon. James Hunter III
Hon. Lawrence A. Whipple

APPENDIX G

Order of the U.S. District Court, Dated June 21, 1976

RLR:kew
74 1380
74 1383
74 1384

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES C. GABRIEL, Pro Se,
JOHN CHARLES VAIANI, Pro Se,
WILLIAM R. WESSON, Pro Se,
Plaintiff

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Defendants

-and-

MISSOURI PACIFIC RAILROAD COMPANY
Defendant-Intervenor

CONSOLIDATED
CIVIL ACTIONS

74-471
74-470
74-469

ORDER

(Judge Hunter)
(Judge Whipple)
(Judge Fisher)

This matter, having been opened to the Court by James C. Gabriel, John Charles Vaiani and William R. Wesson, plaintiffs pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Thomas E. Kauper, Assistant Attorney General of the United States, John H. D. Wigger, Esquire, appearing, Fritz R. Kahn, General Counsel for the Interstate Commerce Commission, Hanford O'Hara, Esquire appearing, Milton Rosenkranz, Esquire and Leon Leighton, Esquire appearing, and the Court having considered all of the documents filed and the Court having filed a letter opinion dated June 9, 1976 and for good cause shown;

It is on this ~~15th~~ 21st day of June, 1976

ORDERED that each plaintiff's motion for reargument herein be and the same hereby is DENIED without costs.

JAMES HUNTER, III
UNITED STATES CIRCUIT JUDGE

LAWRENCE A. WHIPPLE
CHIEF, UNITED STATES DISTRICT JUDGE

CLARKSON S. FISHER
UNITED STATES DISTRICT JUDGE

FILED
JUN 21 1976
At 2:45 P. M
ANGELO W. LOCASCIO
Clerk

APPENDIX H

Order of the U.S. District Court, Dated June 29, 1976

RLR:kew
74 1380
74 1383
74 1384

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAMES C. GABRIEL, Pro Se, JOHN CHARLES VAIANI, Pro Se, WILLIAM R. WESSON, Pro Se,	:	CONSOLIDATED CIVIL ACTIONS
Plaintiffs	:	74-471
v.	:	74-470 74-469
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,	:	ORDER
Defendants	:	
-and-	:	(Judge Hunter) (Judge Whipple) (Judge Fisher)
MISSOURI PACIFIC RAILROAD COMPANY	:	
Defendant-Intervenor	:	

This matter, having been opened to the Court by James C. Gabriel, John Charles Vaiani and William R. Wesson, plaintiffs pro se, in the presence of Jonathan L. Goldstein, United States Attorney for the District of New Jersey, Ronald L. Reisner, Assistant United States Attorney appearing, Thomas E. Kauper, Assistant Attorney General of the United States, John H. D. Wigger, Esquire, appearing, Fritz R. Kahn, General Counsel for the Interstate Commerce Commission, Hanford O'Hara, Esquire appearing, Milton Rosenkranz, Esquire and Leon Leighton, Esquire appearing, and the Court having considered all of the documents filed and the Court having filed a memorandum dated May 29, 1976 and for good cause shown;

It is on this 29th day of June, 1976

ORDERED that each plaintiff's motion for reargument herein be and the same hereby is DENIED without costs.

JAMES HUNTER, III
UNITED STATES CIRCUIT JUDGE

LAWRENCE A. WHIPPLE
CHIEF, UNITED STATES DISTRICT JUDGE

CLARKSON S. FISHER
UNITED STATES DISTRICT JUDGE

FILED
JUN 29 1976
At 11:00 A M
ANGELO W. LOCASCIO
Clerk

APPENDIX I

MO-PAC Charter

FD 8952

FINANCE DOCKET No. 9918

MISSOURI PACIFIC RAILROAD COMPANY REORGANIZATION

Submitted July 6, 1954. Decided July 29, 1954

Upon supplemental record made at reopened hearings held pursuant to the provisions of paragraph (b) of section 208, title 11, U. S. Code, and section 77, of the Bankruptcy Act, as amended, plan of reorganization for the Missouri Pacific Railroad Company, and others, debtors, modified and approved.[1]

Appearances as in prior reports and, in addition, *Arthur Arsham, Harold Brown, Walter H. Brown, Jr., Carl B. Callaway, Allan F. Conwill, Joseph A. Doyle, Felix A. Fishman, Edward L. Friedman, Jr., Emanuel Gruss, Edward J. Hickey, Jr., John P. Humes, Percival E. Jackson, Jerome M. Kirshbaum, Ferdinand H. Kolvoord, Alan S. Kuller, Frederick M. Myers, Jr., Eldon S. Olson, William P. Palmer, David M. Potts, Thomas J. Sheehan, Jr., John Ben Shepperd, Alfonso E. Solanas, Henry I. Stimson, Alfred B. Teton, Jay W. Tracey, Jr.,* and *Lyonel E. Zuna.*

SEVENTH SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the report proposed by members of the staff of our Bureau of Finance. Thereafter, the bankruptcy trustee, acting pursuant to authorization and direction of the United States district court of jurisdiction in these proceedings, filed with us a petition accompanied by a stipulation and agreement, executed by a majority of the parties in interest, embracing certain modifications of the proposed-report recommendations, which, if adopted, would be acceptable to the parties signatory to the stipulation and agreement as an agreed system plan. Our conclusions differ somewhat from those contained in the proposed report.

Request for oral argument on exceptions was made by the independent directors of the Missouri Pacific Railroad Company, debtor. Similar requests made by the Alleghany Corporation, owner of approximately 49 percent of Missouri Pacific common stock, and Oscar Gruss & Son, holders of International-Great Northern Railroad Company adjustment-mortgage bonds, were later withdrawn, with the res-

[1] For previous reports see 239 I. C. C. 7; 240 I. C. C. 15; 257 I. C. C. 479 and 745; 275 I. C. C. 59 and 203; and 282 I. C. C. 629.

date, on 30 days' notice, at their principal amount plus all interest then due and payable thereon.

(*b*) *New equity issues.*—In lieu of the issue of a $100 par-value preferred stock and 1 class (A) of no-par-value common stock (exclusive of possible issue of a class B stock upon exercise of warrants issuable to old common-stock holders) recommended in the proposed report, the stock of the reorganized company would consist of 2 classes of common stock, designated A and B, both of which would be without par value and would have full voting rights. Each share of class A stock would have a stated value of $100, and each share of class B stock would have a stated value of either $100 or $50, to be determined by the Commission.

(*c*) *Class A common stock.*—Dividends on this class of new common stock would be limited to either $5 or $4 per share in a calendar year as the Commission shall determine, irrespective of what amounts may have been paid on class B common stock. Dividends on class A stock would be noncumulative, and none would be paid in the form of stock or notes or in any form other than cash or its equivalent. Class A stock would be nonconvertible, and in the event of dissolution, winding up, or liquidation of the company, the holders of this class of stock would be entitled to receive out of the assets of the company $100 per share before a distribution is made to holders of class B stock, who thereafter would be entitled to any further distributions out of the assets of the company, without further participation by holders of class A stock.

The total stated value of class A common stock, $201,824,761, recommended in the proposed report, would be reduced to $191,755,818 in order to (*a*) eliminate the amount of $3,561,839 which was thereunder allocated to the Missouri Pacific secured serial bonds and $293,639 allocated to the New Orleans publicly held stock and (*b*) take account of the reduction of $6,213,465 in the allotment to International adjustment mortgage bonds as set forth in paragraph (*g*) hereof.

(*d*) *Class B common stock.*—This class of new common stock, having a total stated value of $4,065,717, would be issued only to holders of Missouri Pacific common stock on a basis of 1 share of new, of a stated value of $100 per share, for each 20 shares of old stock, or, in the alternative, in the discretion of the Commission, 1 share of new, of a stated value of $50 per share, for each 10 shares of old stock.

No dividends could be declared on class B common stock in any calendar year unless, during that year, dividends of $5 or $4 (whichever is prescribed by the Commission) have been paid or set apart for payment on the class A common stock; but there would be no other restriction on amount of dividends which may be declared and paid on the class B stock.

BEST COPY AVAILABLE

1, 1936, to the extent earned in the preceding calendar year. Interest shall be mandatorily payable to the extent that available net income is sufficient for the payment thereof; and all interest not paid because of this limitation shall be noncumulative. Interest on the debentures to the extent so earned in each calendar year shall become owing as a debt on December 31, in such year, even though not payable until April 1, in the next succeeding year. If, in any year, interest on the debentures is not covered by available net income, such interest may, in the discretion of the board of directors of the reorganized company, be paid out of any funds lawfully available therefor.

The debentures shall be redeemable as a whole or in part on any interest payment date, on 30 days' notice, at their principal amount plus (*a*) all unpaid interest earned thereon to the end of the calendar year preceding the date of redemption and (*b*) interest at the rate of 5 percent per annum from the end of such calendar year to the redemption date, whether or not such interest is earned. Upon maturity, whether by acceleration or otherwise, the debentures shall be entitled to (*a*) all unpaid interest earned thereon to the end of the calendar year preceding the date of maturity plus (*b*) interest at the rate of 5 percent per annum from the end of such calendar year to the date of maturity, whether or not such interest is earned. All interest on the debentures after maturity shall be a fixed obligation.

Q. *New common stock, class A and class B.*—The common stock of the new company shall be divided into two classes, one of which shall be designated as class A and the other of which shall be designated as class B, each of which shall be without par value but shall have a stated value of $100 per share. The number of shares in each class to be authorized in the certificate of incorporation of the new company shall be fixed by the reorganization managers in relation to the requirements of the plan, and the number of shares in each class to be originally issued shall be in the amounts necessary to carry out the plan. The certificate of incorporation shall permit the authorization from time to time of additional shares of common stock of either class, but shall specifically provide that the new company shall not alter or change the rights of holders of either class of stock or authorize the issuance of additional shares of either class or of any other class or of participating or convertible preferred stock, without the consent of the holders of not less than a majority of the number of shares of common stock of each class at the time outstanding.

Dividends on the class A common stock shall be limited to $5 a share in any calendar year, irrespective of the amounts which may have been paid on the class B common stock. Dividends on the class A stock shall be noncumulative and none shall be paid in the form of stock or notes or in any form other than cash or its equivalent. In any calendar year, no dividends on class B stock shall be declared or paid unless, during that year, dividends of $5 per share shall have been paid or declared and set apart for payment on the class A stock, but there shall be no other restriction on the amount of dividends which may be declared and paid on the class B stock.

Class A common stock shall be nonconvertible, and, in the event of dissolution, winding up, or liquidation of the new company, the holders of this class of stock shall be entitled to receive out of the assets of the new company $100 per share before any distribution is made to the holders of class B common stock, who thereafter shall be entitled to receive any further distributions out of the assets of the new company, without further participation by holders of class A stock.

Each class of common stock shall have full voting rights, and each share of stock shall entitle the holder thereof to one vote. Stockholders shall have the right of cumulative voting in the election of directors.

APPENDIX J

Alleghany Corporation Control and Purchase— Jones Motor Co.

No. MC-F-10444[1]

ALLEGHANY CORPORATION–CONTROL AND PURCHASE–JONES MOTOR CO., INC.–AND CONTROL ERIE TRUCKING COMPANY

Decided January 27, 1970

1. In No. MC-F-10444, acquisition by Alleghany Corporation of control of Jones Motor Company, Inc., and its motor carrier subsidiary, Erie Trucking Company, through purchase of capital stock of Jones Motor Company, Inc.: and merger of a wholly owned subsidiary of Alleghany Corporation into Jones Motor Company, Inc.: and subsequently the merger of Jones Motor Company, Inc., into Alleghany Corporation for ownership, management, and operation; and acquisition by Fred M. Kirby and Allan P. Kirby, Jr., individually and as coguardians of the property of Allan P. Kirby, an incompetent, of control of the operating rights and property through the transaction, approved and authorized, subject to conditions.
2. In Finance Docket No. 25686, Jones Motor Company, Inc., authorized to issue not exceeding 100 shares of its common stock, par value $1.
3. In Finance Docket No. 15656, previous orders of Commission vacated.
4. In No. MC-FC-70907, application dismissed.

David G. Macdonald and *M. Lauck Walton* for applicants.
Bernard A. Gould and *Warren I. Cohn* for Bureau of Enforcement.

REPORT OF THE COMMISSION

HARDIN, *Commissioner:*

Alleghany Corporation, a holding company with total assets in excess of $200 million, is at present subject to dual regulation under the Investment Company Act and the Interstate Commerce Act (act). It seeks, by a series of transactions hereinafter discussed, to become a motor common carrier subject to the plenary jurisdiction of the Interstate Commerce Commission under part

[1] This report also embraces Finance Docket No. 25686, Jones Motor Co., Inc., Stock; Finance Docket No. 18656, Louisville & Jeffersonville Bridge and Railroad Company, Merger, Etc.; and No. MC-FC-70907, Alleghany Corporation, Transferee, Jones Motor Company, Inc., Transferor.

newly issued common stock of Jones, and Jones will have no other capital stock outstanding.

One of the primary reasons presented by Alleghany for acquisition of the operating rights of Jones is to lessen its tax burden. Such burden arises from the fact that Allan P. Kirby, as of February 28, 1969, was the beneficial owner of 4,084,813 shares, or 56.21 percent of the outstanding common stock of Alleghany. Alleghany is, therefore, for Federal income tax purposes, considered a personal holding company since one person (less than 5 individuals) owns more than 50 percent of its stock and has "personal holding income," (60 percent or more of adjusted gross income consists of dividends and interest) and is therefore subject to a 70-percent penalty tax on the "undistributed personal holding income." Alleghany does not want to distribute all such income to avoid the tax. With Alleghany the recipient of the operating revenue generated by its Jones Motor Division, it alleges it would be an operating company rather than a holding company for Federal tax purposes. It could then retain and reinvest net earnings and would not be subject to the 70-percent penalty tax.

Evidence of past operations by Jones under its operating rights is reflected in an abstract of shipments showing all shipments transported in January 1969. The traffic handled consisted of a wide variety of commodities, showing service to points throughout Jones' authority.

In its verified statement filed on October 1, 1969, Alleghany stated that as of February 1, 1968, the date of the Penn Central merger authorized by the Commission in *Pennsylvania R. Co.–Merger–New York Central R. Co.*, 327 I.C.C. 475, Alleghany received and still holds 196,195 shares or 0.81 percent of the 24,104,708 shares outstanding of Penn Central stock. In addition, Allan P. Kirby, controlling stockholder of Alleghany, received and presently holds 390,130 shares or 1.62 percent of the outstanding Penn Central shares. Combining their interests, Alleghany and Kirby together own 2.43 percent of the outstanding Penn Central stock. Alleghany's shares in Penn Central are held in its own name but the Kirby shares are among those held in the name of Sigler and Company.

Alleghany is also the controlling shareholder of Investors Diversified Services, which serves as an investment advisor and distributor for a group of mutual funds. As of September 30, 1969, these mutual funds held 391,900 shares or 1.63 percent of the outstanding shares of Penn Central. It is alleged investment

during the period of the trust. Prior to consummation of the transaction proposed herein, Alleghany shall submit for approval of the Commission a plan showing how it intends to effectuate such trusteeship. While undoubtedly the divestiture of Penn Central shares by the trustee may have certain tax consequences, i.e., either the sale will result in a profit or a loss, Alleghany may avoid the tax consequence by electing not to consummate the proposed transaction. Further, the record before us indicates that the trustee should experience little difficulty in disposing of 390,130 shares of Penn Central now owned by Alleghany. Contained in the affidavit of Fred M. Kirby, previously referred to, is the folowing statement:

15. As of April 9, 1969, the date of the aforesaid Application under §5, the total amount of the capital stock of Penn Central owned by the funds sponsored by IDS /Investors Diversified Services, Inc./ was 1,020,000 shares or approximately 4.23% of the total amount outstanding, all of which were held for investment purposes only and not for purposes of control. As of this date /September 30, 1969/, all but 391,900 of said shares, representing approximately 1.63% of the Penn Central capital stock outstanding, have been sold.

We will further require as a condition to approval that all interlocking directorates between Alleghany and Penn Central, its subsidiaries, and affiliates be terminated. Prior to consummation, proof of such termination shall also be submitted to the Commission. *Chesapeake & O. Ry. Co. Purchase,* 261 I.C.C. 239. Still further, in accordance with Alleghany's suggestion, and our own independent evaluation of the situation, we shall require as a condition for consummation of the proposal that the trusteeship of Alleghany's MoPac securities, as previously ordered by the Commission, be continued subject to the continuing jurisdiction of the Commission. The Commission in the future may either in response to a petition or on its own motion institute an investigation to determine whether the trust should be continued or whether Alleghany's divestiture of MoPac securities should be required.

The Penn Central shares not owned by Alleghany, but controlled by Fred M. Kirby and Allan P. Kirby, Jr., as coguardians of the property of their father, Allan P. Kirby, present a special problem. The 390,130 shares of Penn Central owned by Allan P. Kirby represent 1.62 percent of the outstanding Penn Central shares. While Fred M. Kirby and Allan P. Kirby, Jr., are by the terms of the conditions imposed relating to interlocking

APPENDIX K

ICC's Refusal to Grant Permission for *Amicus Curiae* Brief

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 8th day of July, 1966.

JOHN W. BUSH,
WILLIAM H. TUCKER,
HOWARD G. FREAS,
KENNETH H. TUGGLE,
RUPERT L. MURPHY,
LAURENCE K. WALRATH,
ABE McGREGOR GOFF,
CHARLES A. WEBB,
PAUL J. TIERNEY,
VIRGINIA MAE BROWN,
WILLARD DEASON,
Commissioners.

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Mississippi River Fuel Corp., et al. v. Rose Slayton, et al.,
No. 17,836, U.S. Ct. of Appeals, 8th Cir.
(F. D. No. 22951)

Voted not to authorize the filing by the General Counsel of a brief amicus curiae in the above-entitled court case; Chairman Bush voting to direct the General Counsel to file the aforesaid brief in support of the petition for a writ of certiorari.

A true copy:

H. Neil Garson

SECRETARY OF THE INTERSTATE
COMMERCE COMMISSION